

CHAPTER NO. 132

HOUSE BILL NO. 484

By Representatives McKee, Pinion, Roach

Substituted for: Senate Bill No. 363

By Senators Cooper, Fowler

AN ACT to amend Tennessee Code Annotated, Title 41, Chapter 24, relative to the comparative evaluation process for contracts for correctional services.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 41-24-102(2)(F), is amended by deleting the subdivision in its entirety and by substituting instead the following language:

(F) Operation of facilities: including management, custody of inmates, security, and other associated services and activities.

SECTION 2. Tennessee Code Annotated, Section 41-24-102, is amended by adding the following definition:

(6) "TDOC liaison" means any person appointed by the commissioner to act as the commissioner's on-site designee so that powers and duties not delegable to the contractor shall be carried out with the authority of the state.

SECTION 3. Tennessee Code Annotated 41-24-103, is amended by adding the following language as a new subsection (e):

(e) Contracts for correctional services may include incentives or disincentives provided they are based on quantifiable measurements of performance that are described in the request for proposal and contract. The total of all incentive payments shall not exceed five percent (5%) of the total contract price per annum. This provision shall not be construed to prohibit or restrict the use of liquidated damages as a remedy for a contractor's breach of contract.

SECTION 4. Tennessee Code Annotated, Section 41-24-104(a)(2), is amended by deleting the subdivision in its entirety and substituting instead the following:

(2)(A) The Select Oversight Committee on Corrections and the Fiscal Review Committee shall review any request for proposals, any original contract, and any proposed contract renewal and may submit comments to the authorities listed in §41-24-104(a)(1). Any comment shall be submitted to such authorities no later than thirty (30) days after receipt of the request for proposals, original contract, or proposed contract renewal by the committees. The authorities listed in §41-24-104(a)(1) shall withhold their final action until they have received the committees' comments as submitted in accordance with this section.

(B) Any request for proposals, any original contract, and any proposed contract renewal shall be submitted by the department of correction to the senate state and local government committee and the house state and local government

committee. The committees may review and submit comments to the authorities listed in §41-24-104(a)(1). Any comment shall be submitted to such authorities no later than thirty (30) days after receipt of the request for proposals, original contract, or proposed contract renewal by the committees. The authorities listed in §41-24-104(a)(1) shall withhold their final action until they have received the committees' comments as submitted in accordance with this section.

SECTION 5. Tennessee Code Annotated, Section 41-24-104, is amended by deleting subdivision (c)(2) in its entirety and substituting instead the following:

(c)(2) No proposal shall be accepted unless:

(A) Such proposal offers a level and quality of services which are at least equal to those which would be provided by the state in accordance with the provisions of §41-24-105; and

(B) The cost of the private operation and the cost to the state to monitor the private operation, shall be at least five percent (5%) less than the state's cost for essentially the same services in accordance with the provisions of §41-24-105 as determined by the department of correction and reviewed by the office of the comptroller.

SECTION 6. Tennessee Code Annotated, Section 41-24-104 (c)(3), is amended by deleting the subdivision in its entirety and by redesignating the remaining subdivisions accordingly.

SECTION 7. Tennessee Code Annotated, Section 41-24-105, is amended by deleting the section in its entirety and by substituting instead the following:

41-24-105(a) Prior to the awarding of any contract to provide correctional services as defined in § 41-24-102(2)(F), the state shall establish objective performance criteria and cost criteria for both the state and private contractor. The performance criteria shall measure the quality of management, security and safety, personnel training, inmate programs and treatment and other topics deemed appropriate. The performance criteria and cost criteria shall be established and incorporated as requirements in any proposed request for proposal and any contract and shall be used as the basis for any comparison between the state and any contractor.

(b) For any contract to provide correctional services as defined in Section 41-24-102(2)(F), the initial contract term shall be for a period of three (3) years in order to allow the contractor sufficient time to demonstrate its performance and to provide sufficient information to allow a comparison of the performance of the contractor to the performance of the state in providing similar services. Provided, however, to allow sufficient time for completion and review of any comparative evaluation, the initial term may exceed three (3) years by a period of up to four (4) months as necessary to make the end of the initial term coincide with the state's fiscal year. The initial contract may include an option to renew for an additional period of two (2) years, subject to the provisions of this section.

(c) After the first two (2) years of operation, but before renewing the initial contract, the performance of the contractor shall be compared to the performance of the state for similar services as set out in the contract. The contract may be renewed only if the contractor is providing essentially the same quality of services as the state at a cost of five percent (5%) lower than the state

as set out in the contract, or if the contractor is providing services superior in quality to those provided by the state at essentially the same cost as set out in the contract. For the purposes of this statute and comparison, "essentially the same" shall mean the difference is no greater than five percent (5%). For the purpose of this statute and comparison "superior" shall mean a difference greater than five percent (5%). The methodology for determining the measurement of five percent (5%) differences shall also be set out in the request for proposal and contract.

(d) The quality of services provided by the contractor and by the state shall be compared by the select oversight committee on corrections, or, in the absence of such committee, a committee designated by the speakers of the senate and house. The committee shall determine the quality of services provided by the contractor and the state by applying the performance criteria set out in the request for proposal and contract pursuant to subsection (a) and provide a numerical score for the state and the contractor. The committee shall report its determination to the parties responsible for determining whether the contract should be renewed.

(e) The fiscal review committee, or, in the absence of such committee, any other committee designated by the speakers of the senate and house, shall compare the cost measures as established in this chapter and set out in the request for proposal and the contract for service and provide a prisoner per day cost for the state and the contractor. The committee shall report its determination to the parties responsible for determining whether the contract should be renewed.

SECTION 8. Tennessee Code Annotated, Section 41-24-109, is amended by adding the following language at the end of the section:

The comptroller of the treasury shall audit the performance of the department of correction and the private contractor to ensure that the state is receiving the quality and level of services as described in the contract based upon the performance criteria, the monitoring process, and any applicable sanctions that might be incurred. The comptroller shall report annually or as requested to the select oversight committee on corrections.

SECTION 9. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: April 16, 2001




JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES



JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 26th day of April 2001



DON CONQUIST, GOVERNOR